

Ives, Erik

From: Jorgensen, Jay T.
Sent: Wednesday, July 09, 2008 1:38 PM
To: David Page; George, Robert; Ward, Liza
Cc: Bond, Michael R.
Subject: RE: Teleconference(s) on plaintiffs' models

David,

As you note, one or more of the defense counsel on this email will be on the calls. In addition, the following individuals will join:

Dr. Wells
Thursday, July 10, 11:00 AM/EDT
Dr. Victor J. Bierman, Jr.
Mr. Scott C. Hinz

Dr. Engel
Friday, July 11, 2:15 PM/EDT
Dr. Victor J. Bierman, Jr.
Dr. David W. Dilks,
Dr. Carrie D. Graff
Mr. Scott C. Hinz

-----Original Message-----

From: David Page [mailto:dpag@riggsabney.com]
Sent: Tuesday, July 08, 2008 4:25 PM
To: Jorgensen, Jay T.; George, Robert; Ward, Liza
Cc: Bond, Michael R.
Subject: RE: Teleconference(s) on plaintiffs' models

Jay,

We have arranged for a call with Dr. Wells on Thursday, July 10th at 10 am CDT. We have also arranged for a call with Dr. Engel on Friday, July 11th at 1:15 pm CDT. For both calls we will use the call in number provided below. Please call me if you have any questions. For each call Liza and I will be on the phone. Would you please tell me who will be on the call for the defendants other than Dr Bierman and the counsel listed on this email?

Thanks, David.

David P. Page
Riggs, Abney, Neal, Turpen, Orbison & Lewis, Inc.
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-----Original Message-----

From: Jorgensen, Jay T. [mailto:jjjorgensen@sidley.com]
Sent: Tuesday, July 08, 2008 12:46 PM
To: David Page; George, Robert; Ward, Liza
Cc: Bond, Michael R.
Subject: RE: Teleconference(s) on plaintiffs' models

David,

Friday afternoon should work. Earlier in the afternoon would be better.

Jay

-----Original Message-----

From: David Page [mailto:dpage@riggsabney.com]
Sent: Tuesday, July 08, 2008 12:42 PM
To: Jorgensen, Jay T.; George, Robert; Ward, Liza
Cc: Bond, Michael R.
Subject: RE: Teleconference(s) on plaintiffs' models

Is Friday afternoon available? Engel is not available Thursday or Friday morning.

David P. Page
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-----Original Message-----

From: Jorgensen, Jay T. [mailto:jjjorgensen@sidley.com]
Sent: Monday, July 07, 2008 4:43 PM
To: David Page; George, Robert; Ward, Liza
Cc: Bond, Michael R.
Subject: RE: Teleconference(s) on plaintiffs' models

David,

I just spoke with Dr. Bierman. One of his key staff had an unavoidable conflict arise on Wednesday morning, but they could do Thursday morning or Friday morning with either Dr. Engel or Dr. Wells. We can use this call-in number:

1-888-232-3867
International number: 805-240-7853
Participant code: 334126

-----Original Message-----

From: David Page [mailto:dpage@riggsabney.com]
Sent: Monday, July 07, 2008 3:42 PM

To: George, Robert; Jorgensen, Jay T.; Ward, Liza
Cc: Bond, Michael R.
Subject: RE: Teleconference(s) on plaintiffs' models

Dr Engel is available Wednesday morning for a call at either 10 or 11 am CDT. I am still waiting to hear from Dr. Wells. Would you like to schedule Dr Engel? If so, do you have a call in number you would like to use?

Thanks, David.

David P. Page
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-----Original Message-----

From: George, Robert [mailto:Robert.George@tyson.com]
Sent: Monday, July 07, 2008 11:32 AM
To: David Page; Jorgensen, Jay T.; Ward, Liza
Cc: Bond, Michael R.
Subject: RE: Teleconference(s) on plaintiffs' models

David,

Your oft-repeated statement that a graduate student could assemble the morass of files your experts produced into a working model within a couple of days is argumentative and counterproductive. We are not interested in arguing or posturing. We simply want the benefit of our experts looking at the exact same thing that your experts looked at in terms of a working model when they offered the opinions expressed in their reports and to avoid a clever game of gotcha by the State on these important issues. We are disappointed that you will not agree to have a record created as to the manner in which your experts' models were assembled/constructed and you can expect that we will renew our request for a written description of the steps in this process at the end of the telephone conference. Nevertheless, let us know when your experts are available for a telephone conference.

-----Original Message-----

From: David Page [mailto:dpage@riggsabney.com]
Sent: Monday, July 07, 2008 7:59 AM
To: Jorgensen, Jay T.; Ward, Liza
Cc: George, Robert; Bond, Michael R.
Subject: RE: Teleconference(s) on plaintiffs' models

Jay I do not agree with your statement of the "issue" nor do I agree with your assumptions and predicates. All of the argument (i.e., "recap") does nothing to facilitate the resolution of your problem and our effort to accommodate your expert. Also, the phone conferences are not to be recorded. This is not formal discovery. We are trying to accommodate your expert not defense counsel. We have gone above and

beyond what would normally be provided under the Rules trying to accommodate the many questions your model expert has raised. Frankly, my experts tell me that a reasonably knowledgeable grad student could have had their models running in a couple of days.

We are offering the telephone conferences to allow you expert the opportunity to ask questions of Drs Engel and Wells on how to run the models. If that is acceptable to the Defendants please let me know and I will check on times this week during the morning hours.

David.

David P. Page
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-----Original Message-----

From: Jorgensen, Jay T. [mailto:jjjorgensen@sidley.com]
Sent: Friday, July 04, 2008 3:31 PM
To: Jorgensen, Jay T.; David Page; Ward, Liza
Cc: George, Robert; Bond, Michael R.
Subject: RE: Teleconference(s) on plaintiffs' models

David,

You can see I left out some information in the email below. I meant to say that Defendants' experts currently can participate in the teleconference(s) any morning this coming week. We'd like to do it as soon as possible.

Best,

Jay

-----Original Message-----

From: Jorgensen, Jay T.
Sent: Friday, July 04, 2008 4:22 PM
To: David Page; Ward, Liza
Cc: George, Robert; Bond, Michael R.
Subject: Teleconference(s) on plaintiffs' models

Dear David,

Thanks for talking with Robert George and I yesterday. I write to follow up on that call. To recap, we agreed that plaintiffs' models are made up of several files and that those files must be assembled in a certain manner to reproduce the models on which plaintiffs' experts reply. Robert and I explained that defendants want to ensure that the experts for both sides assemble plaintiffs' models in the same manner. If all the experts assemble your models in exactly the same manner, we will avoid the situation where the experts are unable to assist the

court because they are working from different models. This logistical concern about how to assemble and run the models is different from critiquing the substance of the models and the data and assumptions they contain. The models must be assembled before they can be evaluated.

To help resolve this issue, you offered to arrange a teleconference (or teleconferences) between Dr. Bierman and Drs. Wells and Engel. The teleconference(s) would review the manner in which the models are assembled, but you noted that plaintiffs' experts would not address the assumptions, data, and other substance of their models.

We have conferred with the other defendants and accept the offer to have our modeling experts talk via phone. As we noted in today's call, it's possible that a teleconference will not be sufficient to provide the complete information on how to assemble the models. But it's worth a try, particularly if it can get us to a quicker resolution. Dr. Bierman can participate in teleconference(s) [insert date/times]. Please let us know which of these times works best for you, and whether you would like to do separate calls with Drs. Wells and Engel.

As we noted on our call, the process of assembling these models is complex. We want to make sure all of the experts are working from the same materials. For that reason, we propose to have a court reporter listen to the teleconference(s) and prepare a transcript. This would not be sworn testimony, but would provide accurate notes of what is said during the call for the experts to rely upon as they work with plaintiffs' models. Of course we will provide you with a copy of the transcript.

I hope you have a great 4th. The plans you were describing sounded relaxing.

Jay

Jay T. Jorgensen | Sidley Austin LLP
1501 K St NW, Washington D.C. 20005 | 202.736.8020

Sidley Austin LLP mail server made the following annotations on
07/04/08, 15:31:04:

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